IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 7555 of 2004(Y)

AGAINST THE ORDER DATED 15.1.04 IN IA.6230 & 5005/2003 IN OS.935/1995 of I ADDL.SUB COURT, THRISSUR

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PETITIONER:

SHAJU, S/O.KADA GEORGE,
PERUMBILLYSSERYDESOM, CHOWVOOR VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SRI.PAUL ABRAHAM VAKKANAL

RESPONDENTS:

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1. OMANA, W/O.LATE KADA PAUL,
PERUMBILLYSSERY DESOM, CHOWVOOR VILLAGE,
THRISSUR TALUK.

2. THE SHYNI D/O.OMANA, PERUMBILLYSSERY
DESOM, CHOWVOOR VILLAGE, THRISSUR TALUK.

3. SHIBU, S/O.OMANA,
PERUMBILLYSSERY DESOM, CHOWVOOR VILLAGE,
THRISSUR TALUK.

4. SHYJA, D/O.OMANA, PERUMBILLYSSERY DESOM
CHOWVOOR VILLAGE, THRISSUR TALUK.

5. RAPPAYI, S/O.KADA DEVASSYKUTTY,
PERUMBILLYSSERY DESOM, CHOWVOOR VILLAGE,
THRISSUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C)No.7555 OF 2004

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DATED THIS THE 22ND JUNE, 2007

J U D G M E N T

In this Writ Petition, the petitioner impugns Ext.P5 order passed by the learned Sub Judge in an application for passage of final decree in a suit for partition. The property which is decreed to be partitioned as per the preliminary decree has an extent of 10.350 cents. The share due to the petitioner is one-third, which will be only 3 and odd cents. Towards the middle of the property, a two storied building is situated. Petitioner filed Ext.P4 I.A. for appointment of an advocate commissioner to be assisted by a competent Civil Engineer for dividing the suit property in such a manner that partition is effected allotting portions of the building without demolishing the same to the petitioner also. The respondents on the contrary filed Ext.P3 application praying that the properties be auctioned between the sharers or the court may fix a suitable price for the properties and pay the same to the parties in proportion to the eligible shares. Under Ext.P5, the court below dismissed Ext.P3 application filed by the respondents. Ext.P4 filed by the petitioner was allowed in part to the extent of directing the advocate commissioner to seek the assistance of an expert for assessing the value of the building. But the petitioner's request for a

division of the building also so that allotment of a portion of the building can be made along with portions of the land was declined. It was held that the vacant land extending to 4.220 cents reported by the commissioner to be available can be allotted to the share of the petitioner and due amount can be paid to the petitioner as owelty considering the value of the building to be assessed by the advocate commissioner.

2. Respondents have not entered appearance before this Court.

3. Strenuous and fervent submissions were made before me by the learned counsel for the petitioner. The submissions notwithstanding, I am of the view that this Court will not be justified in setting aside Ext.P5 invoking the visitorial jurisdiction under Article 227. A reading of Ext.P5 will show that the learned Sub Judge has kept in mind all the considerations which ought to be kept in mind by a court considering applications for passage of final decree in partition suits. The sentimental value attached to the building has been considered by the learned Judge. The learned Sub Judge has found that if the land is to be partitioned in three equal shares, the petitioner will be eligible only for 3 cents of land and proceeded to allot the entire vacant land of 4.220 cents after noticing that it will be possible for the

petitioner carry on business by putting up necessary structures on that land. In short, in my opinion, the decision to allot the entire vacant land to the petitioner and to pay him cash on account of the value of the building by owelty cannot be said to be incorrect.

The challenge against Ext.P5 fails and the Writ Petition is dismissed.

(PIUS C.KURIAKOSE, JUDGE)

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